

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

TYRONE L. PORTER,)	
)	
Petitioner,)	
)	
vs.)	No. CIV-15-982-W
)	
UNITED STATES OF AMERICA, by)	
and through THOMAS SCARANTINO,)	
Warden of El Reno FCI,)	
)	
Respondent.)	

ORDER

On May 23, 2016, United States Magistrate Judge Bernard M. Jones issued a Report and Recommendation in this matter and recommended inter alia that the Motion to Dismiss filed by respondent Thomas Scarantino, Warden, be granted and this action be dismissed without prejudice because petitioner Tyrone L. Porter had failed to exhaust his administrative remedies. Porter, who is represented by counsel, was advised of his right to object, see Doc. 17 at 5, and on June 13, 2016, he filed a document entitled "Response to Respondent's Motion to Dismiss and Magistrate Judge's Report and Recommendation." See Doc. 18.

Upon de novo review of the record, including examination of the exhibit attached to Porter's submission that shows that exhaustion may have occurred after Porter had filed his Petition for Writ of Habeas Corpus ("Petition"), see Doc. 1, and Scarantino had filed his Motion to Dismiss, see Doc. 18-1, the Court

(1) ADOPTS the Report and Recommendation [Doc. 17] filed on May 23, 2016, to the extent the Court agrees that Porter's Motion for Expedited Hearing [Doc. 9] filed on September 23, 2015, should be and is hereby DENIED; and

(2) FINDS that this matter should be and is hereby RE-REFERRED to Magistrate Jones for further proceedings so that he may consider inter alia (a) Scarantino's argument as set forth in Proposition II in his Motion to Dismiss, see Doc. 16 at 4-6, that Porter failed to state a claim upon which relief may be granted in his Petition, (b) the consequences, if any, of Porter's failure to timely respond to the arguments and authorities in Proposition II and (c) the consequences, if any, of Porter's failure to exhaust his administrative remedies before the instant Petition was filed.

ENTERED this 15th day of June, 2016.



LEE R. WEST
UNITED STATES DISTRICT JUDGE